STATE REPRESENTATIVE
DON PRIDEMORE

Date: January 23, 2008

To: Members of the Assembly Committee on Family Law

From: Don Pridemore, State Representative
99th Assembly District

Subject: Support of Assembly Bill 571: "Equal Child Placement"

Thank you, Chairperson Owens and committee members, for holding a hearing on Assembly Bill 571 today. The primary focus of this bill is to allow children full and equal access to both parents. Children are benefited immeasurably when both parents are involved in their lives. We have all seen firsthand the affects that broken homes and single parent households have on children. Still, however, we continue to settle on a system that maximizes the importance of one parent—and, as a result, minimizes the importance of the other parent in the life of their child. I believe the time has come for us to officially recognize that children deserve to have equal access to both parents.

All too often, children are used as bargaining chips by vengeful parents in child custody hearings. In order to eliminate this practice, which is detrimental to a child's well-being, I have introduced this bill in order to equalize child placement and promote cooperation between parents.

This bill has three basic elements:

1. This bill requires the courts to presume that "a placement schedule that equalize to the highest degree possible the amount of time the child may spend with each parent" *is in the best interest of the child.* It will allow the courts to overcome this presumption if, after considering all of the factors which weight into the best interests of the child (for example, geographic separation of the parties), the court determines this would not be in the best interest of the child.

2. This bill also clarifies what is a "substantial change of circumstances" necessary to modify an existing placement order. This can take place at the end of a two-year period from the last placement order.

   1) A parent has modified his or her lifestyle or the location of his or her residence to an extent that affects the amount of time the parent is able to care for the child.

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2) A parent has successfully completed parenting classes, a drug or alcohol abuse treatment program, or an anger management program to address a problem that previously hindered his or her ability to care for the child. In addition, the bill deletes the provision that makes a change in the economic circumstances or marital status of a party insufficient to meet the standard for modification.

3. If the court does not order joint custody and equalized placement, this bill requires the courts to state orally and in writing why not.

Most folks would argue that a child is better off with the love and support of two parents. **It is in the child's best interests** to have a placement arrangement that allows for both parents to equally contribute to a child's well-being in all ways: financially, physically, and of course emotionally. However, under current law, many children are deprived of the benefits that the care of two parents can provide. Whether this is due to bias or tradition is debatable; however, neither of those reasons can or would make unequal placement right. This bill will eliminate those discriminatory, outdated factors. No longer will a parent lose a child because of unequal child custody proceedings; even more importantly, a child will no longer lose a parent for these reasons. This bill will "equalize" time with both parents and limit the possibility of discriminatory placement practices. This bill also takes into account the child's welfare, by retaining existing laws protecting children from an abusive parent.

A positive and likely outcome of this bill is increased cooperation between both parents. Parents can no longer use children to "get back at" their former spouse. Placement must be equal unless "clear and convincing evidence" is presented that equal placement will be detrimental to the child's general welfare. Due to this, parents will be forced to cooperate because the revenge aspect of custody hearings will be eliminated. Both parents will go into a custody hearing knowing that they will have equal custody and the child's welfare will become the primary focus. Due to this, non-cooperation will not be rewarded with primary placement.

Another positive effect of the 50/50 placement bill is that custody proceedings will not encourage bitterness between parents, but instead will promote cooperation. Couples who are sharing the responsibilities of parenthood will be more likely to work together to achieve a positive outcome. In addition, parents who are cooperating are far more likely to reconcile their own relationship—which, under normal circumstances, is the absolute best outcome their children could hope for.

It will not come as a surprise to many of you that not everybody is in favor of equalizing placement in custody cases. Right now, money plays a great role in custody disputes. It seems that whoever hires the best law firm and pays for the highest-priced experts usually gets the kids. In addition, I suspect that the bill may be opposed by the "victim lobby." Those who have a vested interest in the status quo are often those same persons whose sole purpose in life is to find and create "victims" to protect. I would like to suggest that this bill will protect the most vulnerable of our citizens, the children, not only from being used as

bargaining chips but from being denied the most basic of God's gifts, a Mother AND a Father.

This bill is essential in order to change a custody battle from a minefield of revenge to a hearing with the child's best interests in mind. Thank you again for hearing this bill and I strongly encourage your support.

Don Pridemore
99th Assembly District

SENATOR JEFF PLALE
SEVENTH SENATE DISTRICT

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Testimony of Senator Jeff Plale
Assembly Bill 571
Assembly Committee on Children and Family Law

Thank you Madam Chair and members of the committee for your consideration of this bill.

Under current Wisconsin law, the court determines a placement plan for a child's parents in the event of a divorce or paternity action. Unfortunately, these plans oftentimes provide a parent with unequal access to their children. Assembly Bill 571 creates a presumption in current Wisconsin statute which says that *parents* are to create a plan that equalizes child placement as opposed to relying on a court's arbitrary discretion.

I have heard many testimonials that have demonstrated to me the need for this legislation. Under the current system, many parents are being given limited access to their children. There is already been enough pain and suffering caused by the divorce, which is only compounded by a contentious custody battle. I have also heard from divorce lawyers who say that the current system provides an incentive for dispute. With this bill we want to remove that incentive.

It is important to note that this bill is not only about fathers. There are also numerous mothers that will gain needed access to their children through the passage of this bill.

It appears, however, that the courts follow an outdated model. In 2008, the traditional family roles of the past are no longer a reality. Many different scenarios exist today, many of which do not seem to have been accounted for the statutes as they exist today. AB 571 wishes to codify this reality.

With AB 571, Wisconsin has the opportunity to create a better life for a child. Statistics indicate that a child without a father has a much greater chance of committing crime(s), using drugs, and suffering from depression. AB 571 will provide our courts the opportunity to remove the adversarial nature of custody battles toward a better, more child-centered approach to divorce settlements.

Last session this legislation was unable to reach the governor's desk. My hope is that committee members will see the need for this bill, so future children do not suffer the negative consequences of a missing parent in their life. Thank you for hearing my testimony, and I will be happy to answer any questions you may have.

Testimony in favor of AB-571
Before the Wisconsin Assembly
Children and Family law Committee
January 24, 2008

My name is Steve Blake and I am president of Wisconsin Fathers for Children and Families. My organization strongly supports this legislation.

WFCF provides a dads hotline for people to call in with problems connected with custody issues. In my work as a counselor on the hotline I often hear people tell me that this or that judge has granted custody in their cases.

I tell them that that is wrong. Only God grants us custody of our children and what judges really do is take it away. It is a natural right which has been affirmed on many occasions by the US Supreme Court, most recently in 2000 when the court said "The interest of the parents in the care, custody and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court". Yet in Wisconsin, as in every other state, parents, most often dads, are routinely denied the right to be parents to their children by a decision made by a judge who likely as not does not even know the children involved and is making a judgment based on the opinion of other people who do not know the children involved. I do not doubt that the people making these decisions do so with the best of intentions. But…

Daniel Webster once said, "Good intentions will always be pleaded for every assumption of authority. It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions." The people who make these decisions claim to be making them in "the best interest of the children" yet it is a basic principle that fit parents have their children's best interest at heart. When two fit parents are in dispute the only proper role for the state should be to protect the rights of both parents equally and allow the parents to determine what is in their children's best interests. This bill seeks to do that- and to return control of the children to those whom God or nature has granted it while protecting each parents rights to bring up the children as they see fit without undue government interference.

Most often it is the father who is denied his right to be a fully participating parent Divorce researchers report that mothers continue to seek sole physical custody, and were successful, 80%–85% of the time, whereas 10%–15% of fathers have sole physical custody (Emery, 1999; Kelly, 1994; Maccoby & Mnookin, 1992; Meyer & Garasky, 1993; Seltzer, 1991).

Fathers are vital to the healthy development of kids and I would like to cite a few positive examples:

Children who have fathers who regularly engage them in physical play are more likely to be socially popular with their peers than children whose fathers do not engage them in this type of play.
Source: Carson, J., V. Burks, & R.D. Parke. *"Parent-child Play: Determinants and Consequences."* In K. MacDonald (Ed.), Parent-child Play: Descriptions and Implications. Albany, NY: State University of New York Press, 1993: 197-220; see also Parke, R.D. *"Fathers and Families."* In M.H. Bornstein (Ed.), Handbook of Parenting: Vol. 3, Status and Social Conditions of Parenting. Mahwah, NJ: Erlbaum, 1995: 27-63

For predicting a child's self-esteem, it is ...physical affection from fathers that matters for daughters.
Source: Duncan, Greg J., Martha Hill, and W. Jean Yeung. *"Fathers' Activities and Children's Attainments."* Paper presented at the Conference on Father Involvement, October 10-11, 1996, Washington, D.C., pp. 5-6.

Children with "hands-on" fathers (fathers who are involved, set reasonable household rules, monitor TV and internet use, etc.) are much less likely to use drugs than children with "hands-off" or absent fathers.
Source: The National Center on Addiction and Substance Abuse at Columbia University. *"National Survey of American Attitudes on Substance Abuse VI:*

In a study of fathers' interaction with their children in intact two-parent families, nearly 90% of the fathers surveyed said that being a father is the most fulfilling role a man can have.
Source: Yeung, W. Jean, et al. *"Children's Time with Fathers in Intact Families."* Paper presented at the Annual Meeting of the American Sociological Association, Chicago, IL, August, 2000.

A study using a national probability sample of 1,250 fathers showed that children whose fathers share meals, spend leisure time with them, or help them with reading or homework do significantly better academically than those children whose fathers do not.
Source: Cooksey, Elizabeth C. and Michelle M. Fondell. *"Spending Time with His Kids: Effects of Family Structure on Fathers' and Children's Lives."* Journal of Marriage and the Family 58
(August 1996): 693-707

And some negative ones:

· 63% of youth suicides are from fatherless homes.
(Source: U.S. D.H.H.S., Bureau of the Census).
· 90% of all homeless and runaway children are from fatherless homes.
· 85% of all children that exhibit behavioral disorders come from fatherless homes.
(Source: Center for Disease Control).

· 80% of rapist motivated by displaced anger come from fatherless homes.
(Source: Criminal Justice and Behavior, Vol. 14, pp. 403-26).
· 71% of all high school dropouts come from fatherless homes.
(Source: National Principals Assoc. Report on the State of High Schools).
· 85% of all youths sitting in prisons grew up in a fatherless home.
(Source: Fulton County Georgia jail populations, Texas Dept. Of Corrections, 1992).

Clearly having a dad in the lives of children is good for the children and good for society as a whole. AB-571 will help ensure that Wisconsin's children get the benefits of both parents love and nurture.

Even though this proposed bill contains safeguards against placing children in dangerous situations past experience has shown that some will argue that the safety of the children preempts all other concerns. Everyone, of course, wants children to be safe.

According to the US Dept. of HHS nearly 84 percent (83.4%) of victims were abused by a parent acting alone or with another person. Approximately, forty percent (40.4%) of child victims were maltreated by their mothers acting alone; another 18.3 percent were maltreated by their fathers acting alone. Another 6.2 percent were abused by their mother and another person and 1.1 percent by their father and another person. In other words nearly half of all child abuse victims were abused by their mother while less than 20 percent were abused by their fathers yet few would argue that children should only be with their dads for their own safety and neither will I. The vast majority of parents are loving caring people who would never dream of doing harm to the children.

Others might make the argument that moms need to be protected from violent fathers who engage in domestic abuse. Again, let me relate some facts as reported in the May 2007 issue of the American Journal of Public Health that the members of this committee might find surprising.

The authors report that in a 2001 CDC survey using a nationally representative sample of some 18,000 young adults aged 18 to 28, 11,370 of whom were in heterosexual relationships, researchers found violence in less than one quarter of all relationships. Of the 23. 9 percent where researchers did discover violence, roughly half was reciprocal. That is, both partners engaged in the violent behavior. In the half were non-reciprocal violence or violence by only one person was indicated, over seventy percent was perpetrated by women.

I do not present these statistics to argue that dads need to be protected from violent mothers. The study cited clearly indicate that most people do not engage in domestic violence at all. And in fact this bill will reduce those factors that might lead to the kind of frustrations that could lead to violence. The feeling that one has been unfairly treated by the system and that one's children, who many feel are the most

precious things in their lives, have been taken away for no good reason.

In conclusion, AB-571 respects both parents most important and fundamental rights. The right to love and care for their children and the right to be treated equally by the state regardless of gender. This bill provides that the children will not be denied the full involvement of their mother and their father in their lives. It teaches kids that both mothers and fathers are considered equally important and therefore that men and women are equals before the law. It will reward the efforts of parents who strive to make things better for their kids by removing the barriers that now exist with the status quo presumptions. It will reduce conflict and bitter fighting because neither parent can hope to gain an advantage by prolonged litigation. It will reduce costs to the state by limiting court involvement and time And it will show the rest of the nation that Wisconsin deserves it's progressive reputation.

AB-571 is good for parents, it is good for children, it is good for families, and it is good for Wisconsin. I urge you to vote yea on AB-571 and send it to the full assembly with a strong recommendation for passage there.

Thank you

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What Others Say About the Divorce Regime

My charges against the divorce regime are extremely serious, and the language I use to describe it is strong. But all my allegations are backed with documentation and have never been refuted. The publications in which they appear are respected and credible journals with solid reputations, and their editors are not known to be extremists. Moreover, I am not the only one making these charges. Even aside from the testimonials of parents who have directly experienced its depredations (but who are seldom believed), here are the views of other eminent figures. None of these are "fathers' rights" activists. Shouldn't any area of government activity about which such prominent people are making such serious charges be the subject of an investigation or at least some public debate?

NB: Since January 2005, Phyllis Schlafly, president of Eagle Forum and one of the most renowned public figures in America, has written assiduously and eloquently about the divorce industry in a series of syndicated columns. She uses language and makes charges at least as strong as mine. I could quote from virtually every line of her columns during this time. To see these columns, visit http://www.eaglefor um.org/topics/ fathers.

"It is remarkable that such a grossly unjust system has not been noticed. One explanation is that no one knows what happens...until it happens to them – and even then they can't believe it. Any objections are dismissed as implausible." Melanie Phillips, *The Sex-Change Society: Feminised Britain and the Neutered Male* (London: Social Market Foundation, 1999), p. 282.

"In the beginning, insiders dismissed [the stories], assuming them to be made up of disgruntled fathers who must have done something unspeakable, or else why would their children's mothers have taken such extreme action? Because if things were as bad as these people say, wouldn't we know about it already?" Maureen Freely, "A Secret World of Suffering Children," *The Independent*, 18 October 2001.

"In recent years, fathers have been the subject of a tidal wave of critical thinking and punitive action.... If the past few decades have seen a systematic war against parents, the battles waged against fathers have been particularly ugly and fierce." Sylvia Ann Hewlett and Cornel West, *The War Against Parents: What We Can Do for America's Beleaguered Moms and Dads* (Boston and New York: Houghton Mifflin, 1998), p. 173.

"Virtually every aspect of what I call the 'bad divorced dad' image has turned out to be a myth, an inaccurate and damaging stereotype. Not only is this myth seriously inaccurate, it has led to harmful and dangerous social policies." Sanford L. Braver with Diane O'Connell, *Divorced Dads: Shattering the Myths* (New York: Tarcher/Putnam, 1998), p. 6. This book has been described as "probably the most important work of conservative social science in a decade." Robert Locke, "Deadbeat Social Scientists," FrontPageMagazine. com, 2 July 2001.

"Women are lone parents in 84% of cases not because men abandon their children, but because... the fathers have been constructively banished, with the collusion of the state, which encourages women to abuse the grotesque power we have conferred on them." John Waters, *Irish Times*, 6 October 1998.

"Open season appears to have been declared now on men. The British government treats all absent fathers as feckless, even though some may be the blameless victims of

destructive behavior by women.... Most divorces...are initiated by women. Many divorced fathers have their homes and children taken away from them and are all but destroyed. They are then clobbered by the Child Support Agency, which treats them as if they are the guilty party....

Even if a father shares childcare equally with his ex-wife, he will have to pay the mother for the child's upkeep. Moreover, the mother's income won't henceforth be taken into account. So even if she's gone off with a man earning £100,000 a year, scooping up the family home and the children en route, her ex-husband will have to pay her – thus supporting behavior he may even believe is damaging his children....

He may be deprived of all contact with his children by courts which stack the cards against him. The lord chancellor's advisory board on family law has said that if wives allege domestic violence against their former husbands, the courts should stop them seeing their children. It is not uncommon, though, for women to make entirely spurious charges of violence against their ex-husbands just to prevent them from having access to their children. Lawyers say the courts are overwhelmingly disposed to believe them, even when there isn't a shred of evidence.

The amount of violence in marriage is small (most violence takes place between cohabitants or lovers). When violence does occur it is balanced between the sexes.... Most physical abuse of children is perpetrated by women." Melanie Phillips, "The Rape Reform That Makes All Men Guilty," *Sunday Times*, 4 July 1999.

"Another troubling new issue is Title IV-D of the Social Security Act, the federal government's child support collection and enforcement program. Originally designed to track down the welfare fathers of illegitimate children, the measure has increasingly targeted middle income households affected by divorce. There is mounting evidence that the system now encourages marital breakup and exacerbates fatherlessness by creating a winner-take- all game, where the losing parent--commonly a father wanting to save the marriage--is unfairly penalized by the loss of his children and by a federally enforced child support obligation. Here we find objectively false feminist views--the assumption that men are always the abusers and women are always the victims--driving public policy. And here we find still another newly indentured class of citizens--noncustod ial parents--being squeezed financially by the state. If you think this an exaggeration, I refer you to no less an authority than Phyllis Schlafly, who calls this runaway federal law the most serious danger facing American families today." Allan Carlson, "Indentured Families: Social Conservatives and the GOP: Can this Marriage be Saved?" *Weekly Standard*, 27 March 2006.

Our common desperation seems to have produced the common delusion that experts actually exist who really can determine with the unerring instincts of a homing pigeon exactly where the best interests of the child lie, where the child should live, whether and how a child has been hurt, and who is unfit to be a parent at all, who should have the right and the duty to care for a child, who should see the child only under restricted conditions, and who should be kept away from the child altogether.

Acceptance of their expertise has led us to trust professionals to make these decisions for the family court system. That means ultimately that we also grant them the power to make these decisions for our own families. The abstract need for society to protect its children becomes inevitably the rape of the rights of the real parents of individual children. Once

again, the institutionalizatio n of society's desire to "do good" results in terrible harm for those in the path of the "do gooders."

The marriage of law and psychology has reached the heights of disproportionate power for the psychologists not just in the family courts but in all legal disputes in which a psychological matter is at issue. Judges buy the validity of the expertise of the confident psychological practitioner and no doubt welcome the opportunity to make their own decisions on some foundation other than personal opinion and bias. Margaret Hagan, *Whores of the Court: The Fraud of Psychiatric Testimony and the Rape of American Justice* (New York: HarperCollins, 1997), p. 234.

"The authorities will act quickly to 'protect' your children from you. They'll curtail your visitation during their investigation; you'll be restricted to being with your children only in the presence of a supervisor, and you'll be ordered to pay the supervisor's fees." Jed Abraham, *From Courtship to Courtroom*, p. 6.

"You'll watch them from afar as they grow up with the kinds of psycho-social problems that children who live with their fathers rarely have. You'll watch from afar, and you won't be able to do anything about it." Jed Abraham, *From Courtship to Courtroom*, p. 6.

"We see bizarre cases where abusive and violent mothers are given child custody to 'save their motherhood. One sees fathers kept from the bedsides of dying children because their presence might upset the mother." Peter Jensen, "New Laws on Child Custody Should Help Fathers," *Vancouver Sun*, 18 December 2002.

"Washing their hands of judgements about conduct...the courts assume that all children should normally live with their mothers, regardless of how the women have behaved." Yet if a mother has gone off to live with another man, does that not indicate a measure of irresponsibility or instability, not least because by breaking up the family and maybe moving hundreds of miles away from her children's father she is acting against their best interests?" Melanie Phillips, *The Sex-Change Society: Feminised Britain and the Neutered Male* (London: Social Market Foundation, 1999), p. 275.

"We have found that who gets the children is by far the most important component in deciding who files for divorce." Margaret F. Brinig and Douglas W. Allen, "These Boots Are Made for Walking: Why Most Divorce Filers are Women," *American Economics and Law Review*, vol. 2, issue 1 (Spring 2000), pp. 126-127, 129, 158 (original emphasis). Judith Wallerstein and Sandra Blakeslee found roughly two-thirds of divorces were sought by women "in the face of opposition" from the husband. *Second Chances: Men, Women, and Children a Decade After Divorce* (New York: Ticknor and Fields, 1989), p. 39. Constance R. Ahrons found "between two-thirds and three-quarters of all divorces are initiated by the wife." *The Good Divorce : Keeping Your Family Together When Your Marriage Comes Apart* (New York: HarperPerennial, 1995), p. 92.

"Fifty-eight percent of men delayed their divorce because of concerns about their children. Far fewer women had this worry. ... 'Not believing in divorce' was the next most important reason men cited. ... The idea of an older man leaving his wife for a younger woman is ingrained in the American psyche — and that has created a misconception about divorce. ... But...as this survey makes abundantly clear, women are more than willing to chart a new life for themselves if they're in an unfulfilling marriage." Elizabeth Enright, "A House Divided," *AARP The Magazine*, July-August 2004, pp. 54, 57; "*AARP The Magazine* Study on Divorce Finds That Women are Doing the Walking,"

AARP press release, 27 May 2004 (http://www.aarp. org/research/ press/presscurrentnews/Articles/ a2004-05- 28-divorce. html).

"Ninety-one percent of women who have divorced say they made the decision to divorce, not their husbands." Shere Hite, *Women and Love: A Cultural Revolution in Progress* (New York: Knopf, 1987), p. 459.

"The wife is the moving party in divorce actions seven times out of eight." David Chambers, *Making Fathers Pay: The Enforcement of Child Support* (Chicago: University of Chicago Press, 1979), p. 29.

"No matter how faithless, a wife who files for divorce can count on the state as an ally." Bryce Christensen, "The Strange Politics of Child Support," *Society*, vol. 39, no. 1 (November-December 2001), p. 65.

"In every other area of law, it aims to make people who have done wrong accept the consequences of their actions: Imagine saying if a burglar that he shouldn't be blamed for his crime because it might stigmatise him and make him upset. Imagine saying of a neighbour who tears down the next door's fence that he shouldn't be held responsible and made to pay for the destruction because it would make it more difficult for the two of them to live next door to each other afterwards. Melanie Phillips, "Death Blow to Marriage," in Robert Whelan, *Just a Piece of Paper*? p. 15.

What if American law refused to enforce business contracts and indeed systematically favored the party that wished to withdraw, on the grounds that "fault" was messy and irrelevant and exposed judges and attorneys to unpleasant acrimony...so that when disputes arose, thieves and owners would be left to work things out among themselves, because after all, one cannot legislate morality? Maggie Gallagher, *The Abolition of Marriage* (Washington, DC: Regnery, 1996), p. 144, 149.

"The divorce laws...were reformed by unrepresentative groups with very particular agendas of their own and which were not in step with public opinion. All the evidence suggests that public attitudes were gradually dragged along behind laws that were generally understood at the time to mean something very different from what they subsequently came to represent." Melanie Phillips, *The Sex-Change Society*, p. 261 (original emphasis). See a similar appraisal by Bryce J. Christensen, "Taking Stock: Assessing Twenty Years of 'No Fault' Divorce," in Robert Whelan (ed.), *Just a Piece of Paper? Divorce Reform and the Undermining of Marriage* (London: Institute of Economic Affairs, 1995), pp. 58-59.

"When someone mentions the best interests of the child, it is code for the best interests of the mother." Al Knight, "Another Blow to Marriage," *Denver Post*, 20 June 2001.

"I represent your kids, but I don't want to. Because I don't love your children. I don't even know them. It is a legal fiction that the law's best interest is your children." New Jersey Family Court Judge Robert Page, quoted in Stephen Barr "Refereeing the Ugliest Game in Town," *New Jersey Monthly*, May 1998, pp. 52-55, 71-74.

"Family lawyers...maintain that justice has no place in their courts where their decisions are driven instead by questions of 'need. Family court judges thus preside with equanimity over injustice." Melanie Phillips, "Goodbye Lords, Hello the Dictatorship of the Judges," *Sunday Times*, 14 November 1999.

"There is absolutely no credible evidence that these [methods] are valid predictors of which spouse will make the best primary parent. In fact, there is no evidence that there *is*

a scientifically valid way for a custody evaluator to choose the best primary parent." Sanford Braver, *Divorced Dads*, pp. 221-222 (original emphasis).

"Your average psychiatrist and psychologist are not adequately trained to do forensic evaluations on children. ... People with no prior experience are now starting to do this work, holding themselves out as experts." Forensic psychologist Stephen Herman, quoted in Richard T. Pienciak and Linda Yglesias, "Who Gets the Kids?" *New York Daily News*, 25 September 1998.

"Legal or not, a sitting state legislator ought to choose not to profit from state contracts. Legal or not, someone should have been willing to say ages ago that sitting legislators shouldn't be receiving those regional child-support enforcement contracts." John Brummett, "The Confession in Nick's Denial," *Arkansas Democrat-Gazette*, 29 April 1999.

"A custody fight is a form of child abuse. Our process is about winners, losers, ownership, possession. We have a divorce system that encourages fighting, bitterness, children being caught in the middle." Hoftstra University Law School professor Andrew Shepard, quoted in the *New York Daily News*, 25 September, 1998.

"These systems have become very efficient little cash machines, generating profits rather than working for the best interests of children and their families." C. Jesse Green, interview with attorney Michael E. Tindall, *Michigan Lawyers Weekly* (http://www.michigan lawyersweekly. com/loty2000/ tindall.htm; no date, accessed 1 May 2002).

"The system of adversarial attorneys, advocacy agencies, and judges constitutes an industry that deserves to be outlawed for crimes against humanity. ... The divorce industry has to be dismantled, burned, and buried like the monster it is." Kathleen Parker, *Orlando Sentinel*, 10 February 1999.

"Divorce is a great destroyer that is eating the heart out of society as well as savaging children's lives. Its depredations will not be reversed given ever so many mediators or conciliators." Patricia Morgan, "Conflict and Divorce: Like a Horse and Carriage?" in Robert Whelan (ed.), *Just a Piece of Paper? Divorce Reform and the Undermining of Marriage* (London: Institute of Economic Affairs, 1995), p. 32.

"If I complain to the presiding judge about Judge A, the good-old-boy network is going to kick in, and it's going to hurt my client. ... Family Court judges have tremendous latitude in making decisions, more so in some ways than in the other courts." Attorney quoted in Paul Rubin, "Judge Not," *Phoenix New Times*, 31 August 2000.

"The Domestic Relations and Juvenile Courts of Butler County foster a culture of secrecy, fear and judicial abuse that violates the most fundamental and sacred rights guaranteed by our nation's Constitution — the rights of due process of the laws. ... [Litigants] "are routinely excluded from court proceedings and deliberations, told to wait outside the hearing room in a hallway while their lives, personal property, children, and homes are divided up by strangers. ... Nowhere is this judicial hypocrisy more dramatically illustrated than in the Court Rules of the Domestic Relations Court. These rules require placing personal information about people's private lives in public records, which are easily available on the Internet, while blocking disclosure of what judge is assigned to the case. ... The outrage is muted by an incestuous network of insiders who are spared the crucible of public scrutiny by a system that operates behind locked doors,

disciplined by a real fear of being punished if the members ever break ranks and rail against the injustice they see daily. Michael A. Fox, *A Culture of Secrecy, Fear, and Judicial Abuse: A Report on the Butler County Juvenile and Domestic Relations Courts* (http://www.pacegrou p.org/fox_ report_without_ doc.pdf, accessed 12 November 2004), pp. 2-3.

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TO: Assembly Committee on Children and Family Law

FROM: Bob Andersen

RE: Assembly Bill 571, relating to equalizing physical placement to the highest degree, requiring the court to state the reasons for ordering sole legal custody or not equalizing physical placement, and standards for modifying legal custody or physical placement.

DATE January 24, 2008

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Family Law is one of the three major priority areas of law for our delivery of legal services (the other two are public benefits and housing).

1. The Role of Fathers Should be Expanded in Raising Children

The fact is that legislation that was enacted a few sessions ago – to create a presumption of joint legal custody and to require that physical placement be maximized for parents – has made great strides toward this goal. The reality is that, because the law now requires a presumption of joint legal custody, joint or equal periods of physical placement has become the starting point for many courts.

However, there is no doubt that for many fathers, the current requirement that physical placement be "maximized" does not result in greater awards of physical placement as it should. For people who are concerned about the adverse effects on children of shuffling them back and forth each week or of the disruptive effect that equalized placement has on the children's education, there are other ways to equalize placement. Many fathers are able to do this now – by greatly expanding physical placement during periods of time outside the school year.

For some fathers this is not really the best solution and equalized placement during the school year would be better.

However, because there are fathers who are actively seeking equalized placement and who are denied, the question becomes whether it is advisable to completely revamp the system by creating a presumption of equalized placement that will cover all family law cases. Unfortunately, there are many fathers, mothers, judges and social workers – and society in general, really – whose stereotypical view is that after divorce the father should have physical placement for 30% of the time, for example. For all of these people, there needs to be a sea change in expectations. Actually, legislation like the legislation that was enacted creating a presumption of joint legal custody does a great deal toward promoting this change in attitudes toward equalized placement. ***But, to legislate a presumption in favor of equalized placement in all cases raises questions that are akin to the axiom that you cannot legislate morality.*** There needs to be a change in attitudes by all who are involved, before legislation like this will even work.

2. **AB 571 Will Harm Other Parents Who Are Not Interested in a 50-50 Placement, by Creating this Presumption**

To benefit the fraction of parents who seek greater physical placement and who are denied, the bill completely changes the system for everybody else. Under the bill, all parties to family law actions are required to share physical placement equally, whether they want it or not or whether they have the means to or know how to avoid that result. ***That is because the bill provides that the parties will have equal placement, unless they can show by "clear and convincing evidence" that equalized placement is not in the best interest of the children.***

"Clear and convincing evidence" is the highest standard of proof that applies to civil actions. The only standard of proof that exceeds this standard is the standard of proof in criminal law, that requires proof beyond a reasonable doubt. The ordinary standard in civil actions is proof by a "preponderance of the evidence." According to *Black's Law Dictionary,* "preponderance of the evidence" means

> Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it, that is evidence which as a whole shows that the fact sought to be proved is ***more probable than not***.[emphasis added]

Black's Law Dictionary defines "clear and convincing" evidence as

> Generally, this phrase and its numerous variations mean proof beyond a reasonable, i.e. a well-founded doubt. Some cases give a less rigorous, but somewhat uncertain meaning, more than a preponderance but less than what is required in a criminal case.

A 1995 federal court decision for the Eastern District of Wisconsin held that

> Clear and convincing evidence . . . is evidence which proves in the mind of the

trier of fact ***abiding conviction that truth of actual contentions are highly probable***. [emphasis added] Nordberg Inc. V. Telsmith, Inc, 881 F. Sup. 1252, affirmed 82 F 3d 394.

A 2006 Wisconsin Appeals Court defined "clear and convincing"

> "Clear and convincing standard requires evidentiary proof ***to a reasonable certainty*** by evidence that is clear and convincing. [emphasis added] Town of Schoepke v. Rustick, 723 N.W.2d 770, 296 Wis. 2d 471.

In the context of these Wisconsin court cases, this means that AB 571 requires a party to submit evidence that shows that it is ***highly probable*** or that it is ***reasonably certain*** that it would be ***against the best interest*** of the children, in order to avoid a 50-50 placement.

3. **This Would Be a Difficult Burden of Proof for Parents Who Do Not Choose to Split Physical Placement 50-50.**

For the vast majority of parents who do not want to share physical placement 50-50, this becomes a very difficult standard to meet. Although the bill requires the court to look at the list of factors that exist now under s. 767.41 (5)(am) [see # 6 of this outline] for the determination of legal custody and physical placement issues – including the wishes of the parents -- the parents still have to show that it would be ***highly probable*** or ***reasonably certain*** that it would be ***against the best interest of the children*** if the parents' wishes were accommodated.

Section 767.41 (5)(am) 1. Provides that one factor to be considered is

> 1. The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial.

This would be ignored, unless it could be shown that to do so would be ***highly probable*** or ***reasonably certain*** to be ***against the best interest of the children.***

The solution to this problem is not in making an ***exception*** for these kinds of stipulations by parents who do not want to share physical placement 50-50, because one would not want to make it ***automatic*** that the parents' stipulation were to be adhered to. That might lead to a very bad result where that is not in the best interest of the children. That also would allow for some bad trade-offs – for child support, for example – that would not be in the child's best interest.

That is why the way in which current law treats these stipulations is best. Under current

law the parents' wishes are a ***factor*** to be considered. Unfortunately, AB 571 reduces the effect of such a parental stipulation, by creating such a difficult burden of proof in favor of a 50-50 placement.

4. **The Creation of Such a High Burden in Favor of a 50-50 Split of Physical Placement Will create A Special Hardship for Unsophisticated Parties Who are Not Represented by Counsel**.

In Milwaukee County, estimates have been that in ***50%*** of the family law actions, ***neither party is represented by counsel*** and that in *75%* of the family law actions, ***only one side is represented by counsel.***

It will be very difficult for unsophisticated and unrepresented parents to understand how to ***rebut a presumption in favor of a 50-50 placement by proof that is "highly probable" or "reasonably certain" to be against the best interest of the children.*** The result will be automatic awards of equal placement to parents who are uninterested or unable to adequately care for the children.

5. **The Presumption in AB 571 Applies to Paternity Cases, as Well**

For paternity cases in which the father has had little or no involvement with the child, it does not make sense to create a presumption in favor of equalized placement, with such a high burden to overcome that presumption. The result would either be awards of equal placement that are inappropriate, given the ability of interests of the parents. The result could also be that the law is used as leverage for some other favorable order in the paternity judgement.

6. **Current Law Provides a Better Framework for Making Determinations About Physical Placement**

Under current law, all of the following factors are to be taken into account in determining how to allocate physical placement. The standard is simply ***what is in the best interest of the children***. Proof of what is in the best interest of the children is by the preponderance of the evidence. The problem with AB 571, is that it diminishes the effect of any of these important factors, by ignoring them unless they rise to the level of showing a ***high probability*** or ***reasonable certainty*** that an award of equal placement will not be in the ***best interest of the child.***

- the wishes of the child and of the parents
- the interaction and relationship of the child with the parents or siblings
- the amount of time and the quality of time each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life-style changes that a parent proposes to make to be able to spend time with the

child in the future

- the child's adjustment to the home, school, religion and community
- the age of the child and the child's developmental and educational needs at different ages
- the need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child
- the availability of public or private child care services
- the cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party
- whether either party can support the other party's relationship with the child, including encouraging and facilitating frequent contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party
- whether either party has a significant problem with alcohol or drug abuse (except consumption that rises to the level of endangering the physical, mental or emotional health of the child)
- the reports of appropriate professionals if admitted into evidence
- such other factors as the court may in each individual case determine to be relevant

7. **AB 571 Diminishes Protection for Victims of Domestic Violence**

Under current law, s. 767.41 (5)(bm), where there is a pattern or serious incident of interspousal battery or domestic abuse, the law provides that the safety of the children and of the victim are of ***paramount concern***, in considering the factors to be taken into account in entering an order for custody and physical placement. AB 571 diminishes that protection, by providing that the existence of a pattern or serious incident of interspousal battery or domestic violence will not prevent an order for equal placement from being made, unless the evidence rebuts the presumption in favor of equal placement by evidence that shows a ***high probability*** or ***reasonable certainty*** that the best interest of the children will not be served by an order for equal Placement.

This means that victims of domestic violence will be exposed to their perpetrators, by being forced into frequent contact with them, unless they can reach this higher level of proof that a 50-50 order is not good. It also means that children will be exposed to greater danger, unless the evidence rises to this level. The creation of the presumption by AB 571, which may be rebutted only by evidence to such a high degree, effectively negates the current law which provides that the safety of the children and of the victim are of ***paramount*** concern. The ***paramount*** concern for safety is overridden by a ***presumption*** in favor of equal Placement.

8. **AB 571 Creates a Presumption in Favor of Revising a Legal Custody or Physical Placement Order After Two Years Where Either (1) a Parent Has Modified His or Her Lifestyle or the Location of His or Her Residence to an Extent that it Affects Physical Placement or Legal Custody; or (2) A Parent Has Successfully Completed Parenting Classes, Alcohol or Drug Treatment, or Anger Management Classes.**

Under current law, limitations are placed on the ability of parents to reopen custody and physical placement fights, in the interest of the children. Otherwise, there is no end to what some parents will do to continue the fights forever. For the first two years, custody and placement orders may not be revised, unless the parent can show that the current order is physically or emotional harmful to the child. After two years, orders may be modified if the parent can show that it is in the best interest of the child and there has been a substantial change in circumstances. Under current law, after two years, there is a presumption that the current allocation of legal custody and the current order of physical placement for the parent with the majority placement order is in the best interest of the child. In other words, there is a presumption that the status quo is in the best interest of the child.

Under this bill, the law is left as is for the first two years after a custody or placement order is entered, but the law is changed for what happens after two years. The current presumption in favor of the status quo is repealed.

In its place is a new ***presumption***, that it is in the best interest of the child to change legal custody or physical placement, if either of the two applies:

(1) a parent has modified his or her lifestyle or the location of his or her residence to an extent that it affects the amount of time the parent is able to care for the child, or

(2) a parent a parent has successfully completed parenting classes, Alcohol or drug abuse treatment, or anger management classes to remove a problem that hindered the parent's ability to care for the child.

First, the problem with this proposal is that it will defeat the purpose of the current law, which is to reduce the fights that occur between the parents over the children. Under the first paragraph above, it will be easy for parents to claim a change in lifestyle or to simply move his or her residence. Once that is done, a presumption is created ***in favor*** of a change in custody or placement orders.

Secondly, the expression – "has modified his or her lifestyle" – is so vague, it can apply to almost anything as a basis for changing the orders.

Third, the statute applies to both legal custody and physical placement, so a change in

lifestyle or location allows a parent to change an order for legal custody – which is not really related to changes in lifestyle or location. Those changes would relate to orders of physical Placement, not legal custody.

Fourth, the fact that a parent has completed treatment does not naturally give rise to the presumption that legal custody or physical Placement orders should be revised. There may have been several other issues involved in the initial order for physical placement or legal custody.

Supreme Court of Wisconsin

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A. John Voelker
Director of State Courts

January 24, 2008

The Honorable Carol Owens
Chair, Assembly Committee on Children and Family Law
Room 315 North, State Capitol
Madison, WI 53702

RE: Assembly Bill 571, Equalizing Physical Placement

Dear Representative Owens:

I regret that I will be unable to personally testify before your committee today, but I ask that you accept this written testimony, submitted on behalf of the Legislative Committee of the Judicial Conference. The Judicial Conference is made up of all the judges in Wisconsin.

The Legislative Committee opposes Assembly Bill 571 that makes significant changes to the statutes relating to physical placement of minor children. Among the concerns we see with the bill are the following:

- It moves the court's focus away from the best interests of the individual child by making a rebuttable presumption of what is in every child's best interests.
- The bill seems to presume that every child can adapt to an equal placement schedule, despite the view of many experts that this is not true.
- The burden of proof is raised to the middle level burden of clear and convincing evidence to rebut the presumption of an equal placement schedule.
- The bill's standards for modifying placement decisions are likely to lead to more litigation of placement schedules than the current law. The bill establishes some rebuttable presumptions and deletes certain current considerations that promote stability in the child's schedule.

Therefore, we urge your committee to not recommend passage of AB 571.

In the event this bill is voted on by this committee, we would suggest one technical change,. We suggest Sec. 3 of the bill be changed (page 3, lines 18 and 19) to require judges to put their decisions "on the record" rather than the suggested "orally and in writing." Most decisions of this kind are rendered from the bench on the day of the hearing, rather than later in the form of written decisions. If the decision is "on the record" it is being given orally by the judge and can be reduced to writing by preparation of a transcript.

I hope these comments will assist your committee in its deliberations. If you have questions, please do not hesitate to contact me or our Legislative Liaison, Nancy Rottier. Thank you.

Respectfully submitted,

A. John Voelker
Director of State Courts

AJV:NMR
cc: Members, Assembly Committee on Children and Family Law

Family Law Section

State Bar of Wisconsin
Wisconsin Lawyers. Expert Advisers. Serving You.

TO: Assembly Committee on Children and Family Law

FROM: Family Law Section, State Bar of Wisconsin

DATE: January 24, 2008

RE: 2007 Assembly Bill 571
2007 Senate Bill 311

The State Bar's **Family Law Section** opposes 2007 Assembly Bill 571/2007 Senate Bill 311, which proposes changes to the manner in which legal custody and physical placement decisions are reached by courts in actions affecting the family across Wisconsin. This bill shifts the focus from protecting and promoting the best interests of children by creating a presumption that a schedule that equalizes placement for the parents to the highest degree possible is in a child's best interests, rather than beginning with consideration of the factors set forth in Wis. Stat. § 767.41(5) which represent many predictors indicative of positive child adjustment when the parents are living in separate households. In addition, this bill eliminates the presumption in placement modification disputes that continuing the current placement schedule and allocation of decision-making authority is in the best interests of children, thereby eliminating the considered judgment that continued stability and predictability for children is in their best interests when a parent seeks modification of a placement order.

Children living with separated parents, whether as a result of divorce or paternity actions, are the most vulnerable players in custody and physical placement determinations; they represent a class of citizens with a need for special protection. Public policy requires that there must be a special "child focus" when the courts decide custody and physical placement matters, and current factors that must be considered by the court under Wis. Stat. § 767.41(5) have been developed over time to maintain the focus on *children* involved in these matters by requiring consideration of a wide range of items that are important to the interests, development, adjustment and success of the children of divorced and never married parents.

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Consideration of the myriad factors that impact a child's best interests must be the focus of our statutory scheme as a starting point for determining physical placement schedules. No social science research supports equal placement as a mandate or as the preferred placement schedule when considering a child's best interests; reaching a placement schedule must be based upon child-focused factors that are important predictors of the success of children, not on a presumption of starting the analysis with equal placement because that concept is assumed to be "fair" to the parents. The legislature must not lose its focus on its duty to protect and promote the health of the children whose parents live separately.

Mandating a presumption to equalize placement to the highest degree will not decrease litigation in placement cases. Such a presumption will serve to create an area ripe for destructive litigation to find a way out from under the presumption. This increased litigation fosters hostility, bitterness and conflict between parents which, according to social research, is most detrimental to a child's best interests. In addition, this bill proposes a "one size fits all" solution that cannot be practically applied to the broad range of families, relationships and children that come before the courts. The current law, which requires that a child's time between the parents be maximized after consideration of the factors set forth in Wis. Stat. § 767.41(5), allows the court the needed flexibility to fashion schedules to accommodate each family's unique circumstances and provides for the high level of investigation into each family's situation that is necessary to promote and protect the best interests of children. This bill states that equal placement for parents is in a child's best interests, when there is no social research that verifies that contention–rather, under current law the court must consider the statutory factors which have been added over time because each factor has been shown to be highly relevant to what is in a child's best interests.

Finally, the bill's proposed repeal of Wis. Stat. § 767.451(1)(b)2a and b which contain the presumptions that continuing the current placement schedule and allocation of decision-making authority in modification proceedings eliminates the reality that stability and predictability for children is paramount. It should not be enough to simply complete, for example, an alcohol abuse treatment program, and then demand equal placement under the presumption when a child has developed a comfortable, predictable and successful routine. As indicated, we cannot lose focus on what is at the heart of the current placement statutes–the children and their ultimate well-being and successful adjustment.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at slonergan@wisbar.org or (608) 250-6045.

Testimony | Assembly Bill 571 | January 24, 2008
Companion Bill: | Senate Bill 311

The Intent of the Law
The value of equalizing child placement among divorced and never-married parents will be found in the benefits accrued to the children in these non-intact families. In cases where both parents are capable and want to be completely involved in raising their children, this reform will change self-serving parental behavior into cooperation and, in the process, will provide more parental resources for those children.

The Letter of the Law
As it becomes obvious to parents in conflict that litigating for advantages in child placement to satisfy hostile or dominant motives is a waste of money, they'll be persuaded to cooperate by the letter of this law in most cases. Parents who are ordered to equal placement settlements in court will have no complaints about fairness and their children will have far more financial resources in parental support. Non-custodial parents, especially, are known to be much more willing to commit themselves to support when they feel they've been treated reasonably. Who could deny that removing incentives for greed and revenge will reform many parents to the advantage of their children??

The Spirit of the Law
This proposal will also offer children a traditional, personal source of support that's often been denied them throughout the present, no-fault divorce era: the substantial presence of both parents in their lives and the mental and emotional relationships cultivated with each of the parents. The spirit of this law will assure children the full psychological identity and security of countless hours spent with both parents in their respective households. Who could deny that the mental health of children brought up in an atmosphere of gender-neutral parental love is in their best interest??

The Optimism of the Law
As families continue to evolve in personal roles and parent-child relationships, the separate and equal assignments of weekly child placement in this reform will gradually encourage more parents to develop their social lives and pursue career plans in their post-divorce households. Who could deny that persuading both parents to become well-developed, self-reliant role models provides the best example of adulthood for the children involved??

We can confidently predict that parental time and resources will be more appropriately directed to their children with enactment of this legislation. In many of the dysfunctional families resulting from divorce, never-married lifestyles and paternity adjudications, it's time to improve the lives of the children at issue. Please offer them a vote of support and approve this family law proposal.

Sincerely,

Joseph C. Vaughn 800 Elm Dr. Apt. 318 Edgerton, WI. 53534

Listening to Children of Divorce: New Findings That Diverge From Wallerstein, Lewis, and Blakeslee*

William V. Fabricius**

I review new findings on (a) college students' perspectives on their living arrangements after their parents' divorces, (b) their relations with their parents as a function of their living arrangements, (c) their adjustment as a function of their parents' relocation, and (d) the amount of college support they received. Students endorsed living arrangements that gave them equal time with their fathers, they had better outcomes when they had such arrangements and when their parents supported their time with the other parent, they experienced disagreement between mothers and fathers over living arrangements, and they gave evidence of their fathers' continuing commitment to them into their young adult years. These findings consistently contradict the recent, influential public policy recommendations of Judith Wallerstein.

Despite much research on the consequences of divorce for children, many aspects of divorce from the child's point of view remain relatively unstudied. These include their preferences for their postdivorce living arrangements, their perceptions of behaviors on the part of either parent that threaten to alienate them from the other parent, their perspectives on what makes a good divorce versus a bad divorce, and their resolutions about how they would handle divorce with children. It is unlikely that many parents have heard their own children's perspectives on these issues. It is also unlikely that policy makers are aware of children's perspectives. In the research discussed here, my colleagues and I studied children's perspectives by questioning young adults who had grown up in divorced homes. The advantage of studying young adults is twofold: their perspectives are informed by all of their childhood experiences of their parents' divorces, and, because they are poised to begin their own families, their perspectives are likely to predict not only their own future parenting decisions should they become divorced parents, but also their stands on the important public debates about divorce policy in this country.

Sample and Theoretical Foundation

Our informants have been college students. College students are a convenience sample, and the possibility exists that college students from divorced families represent a select sample of divorced families. Although extending this research to include noncollege samples is important, three points are worthy to note in support of using college students. First, we have not encountered evidence that college students from divorced families represent a "select few" who escaped the ill effects of their parents' divorces. The percentage of students from divorced families in our samples over the last few years (ranging from 28% to 31%) matches estimates of the percentage of children in the national population from divorced families (approximately 30%; e.g., Bumpass & Sweet, 1989; Furstenberg & Cherlin, 1991). We also are encouraged by the findings from two recent studies: (a) a meta-analysis of the effects of sole versus joint custody on children's adjustment (Bauserman, 2002) found no differences associated with convenience (including college) samples; and (b) a study of the distress felt by young adults over their parents' divorces (Laumann-Billings & Emery, 2000) found few differences between students from an elite university and low-income–community adults.

Second, some college students report very negative experiences with their parents' divorces, and others report much more positive experiences. This allows us to investigate the processes that may lead to positive versus negative experiences. These processes should not differ even if the sample is somewhat select and higher functioning than normal.

Third, college students constitute a substantial proportion of the population of young adults. For example, the university at which our research was done accepts roughly the top 25% of the state's high school graduates (*Arizona State University Viewbook*, 2003–2004). Thus, an immediate practical application of our findings is that they can be shared with divorcing parents who are likely to send their children to college, because these findings show what their children may think and feel years later about how their parents handled their divorce.

Attachment theory provides the theoretical basis for this research. A central construct in attachment theory as originally formulated (Bowlby, 1969) and later interpreted (e.g., Sroufe & Waters, 1977) is that a history of parent availability and responsiveness to the child contributes to the security of the child's emotional connection to the parent and the child's development of healthy independence. A history of unavailability and unresponsiveness contributes to the child's feelings of insecurity in the relationship, perceptions of rejection by the parent, and anger toward the parent. Thus, attachment theory provides an explanation for why both quantity and quality of time spent together are important for parent-child relationships. After divorce, parents' availability is constrained by the child's living arrangements. Attachment theory allows us to make certain predictions concerning living arrangements, including (a) children should have attachment-related concerns about their postdivorce living arrangements, and (b) the amount of time their living arrangements provide for them to be with their parents should affect the emotional security of their relationships with their parents. Thus, attachment theory provides a framework for understanding the interpersonal meanings and feelings that are likely to be part of children's perspectives on their postdivorce living arrangements.

As we pursued this work, our findings have run counter to much of the prevailing wisdom. They are most consistently at odds with Judith Wallerstein's recent findings and policy rec-

*Portions of this research were presented at the 2000 and 2002 Association of Family and Conciliation Courts Conferences. I wish to extend thanks to the dedicated undergraduate students who have helped with this project: Domenica Nersita, Jeff Hall, Kindra Deneau, Kristin Turner, and Meena Choi.

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Key Words: attachment, child support, custody, divorce, fathers, relocation.

(*Family Relations*, 2003, 52, 385–396)

tionships in her small, nonrepresentative sample, focusing on findings from a few studies that did not show a relation between child adjustment and amount of father-child contact (e.g., Guidubaldi & Perry, 1985; Hetherington, 1993), and deprived of more recent research (e.g., Bauserman, 2002; see Warshak, 2000, for a critique of her argument), she concluded that the "guiding principle" in relocation cases should be to protect "the stability and integrity of the postdivorce family unit, in which the key relationship is the one between child and primary custodial parent" (p. 26). The court agreed, helping to begin a national trend in court decisions to permit custodial parents to move with the child. For example, in a recent New Jersey Supreme Court decision (*Baures v. Lewis,* 2001) heavily influenced by Wallerstein's brief, the court affirmed "the simple principle that, in general, what is good for the custodial parent is good for the child" (p. 28).

Surprisingly, this trend occurred in the absence of direct evidence about the effect of relocation on children of divorce. A review of the social science literature undertaken for the legal community (Gindes, 1998) found no empirical studies designed to answer the question. A few studies existed reporting on the (generally deleterious) effects of parental relocation on nondivorced children (Jordan, Lara, & McPartland, 1996; Tucker, Marx, & Long, 1998; Levine, 1966; Humke & Schaeffer, 1995; Stokols & Schumaker, 1982). The most direct evidence to be found specifically with divorced children (Stolberg & Anker, 1983) showed that a large number of "environmental changes," one of which was parental relocation, predicted poor outcomes in children, but the effect of parental relocation was not specifically examined.

We conducted a study to tackle this issue directly (Braver, Elman, & Fabricius, 2003). We sought evidence about long-term child outcomes in college students whose parents had divorced at some time during their childhood. Long-term effects are important, because although children might initially be disrupted by a move, the possibility exists that they may eventually adjust. Also, policy makers would likely want to give greater weight to long-term outcomes.

We divided college students whose parents were divorced into five groups: neither parent ever moved "more than an hour's drive" away from the family's home (n = 232), mother moved with the child (n = 148), father moved with the child (n = 22), mother moved without the child (n = 46), or father moved without the child (n = 154). Then we compared families in which neither parent moved away to those with any moves. Students from families in which one parent moved reported that they received less financial support from their parents, worried more about that support, felt more hostility in their interpersonal relations, experienced more distress related to their parents' divorce, were less likely to perceive each of their parents as sources of emotional support and role models, were more likely to perceive that their parents did not get along with each other, were in worse general physical health, and had lower general life satisfaction. The most common moves separated the child and father, either because the mother moved with the child or the father moved without the child. The effects were remarkably similar in these two cases.

Relocation is supposed to be undertaken for reasons that are expected to improve the parent's and/or the child's life. Had we found that when the mother moved with the child the student showed advantages, it might imply that moves resulted in improved conditions for the child. Had we found no differences, it might imply that moves were undertaken to rectify bad situations and that they had the desired effects. If the moves had any beneficial effects, it is hard to understand why we found deficits associated with mother moving with the child. We would have to assume a rather complicated series of events; namely, that families in which mothers moved with the child were predisposed to be distressed, and that the move made things better than they would have been had she stayed but still left the child distressed. Because parental conflict could predispose the child to distress and also motivate the mother to move, we currently are investigating whether families with moves had more conflict beforehand, and whether child outcomes remain after controlling for conflict. A simpler explanation is that lack of time together after relocation can damage the child's security in the father-child relationship. This would account for the similar findings for moves by the mother with the child and moves by the father without the child. At the very least, it is clear from our findings to date that there is no evidence for the increasingly commonheld presumption in the courts that moves instituted by the custodial parent are in the best interests of the child. Instead, parents and courts should carefully consider any possible effects on the child of moves by the mother or the father.

Conclusion

Warshak (2000) argued that Wallerstein has "shifted from her earlier position" (p. 89) in which she found more value and importance in the father's contributions (e.g., Wallerstein & Kelly, 1980). The recent Wallerstein (e.g., Wallerstein et al., 2000; Wallerstein & Lewis, 1998) paints a bleak picture of children's lives with their fathers after divorce. She argues that divorced fathers cannot be expected to remain involved with their children, that it is harmful to children to require them to go through the motions of remaining involved with their fathers by forcing them to visit, that fathers must be required to help with college expenses, and that the only real consideration in deciding whether a custodial mother should move away from the father with the child is how much the move will benefit the mother's life.

Our findings present a different picture. We found that far from paternal involvement being perceived as necessarily disruptive and unworkable, it is not uncommon for young adults to have wanted more of it. Far from fathers necessarily dropping out, these same young adults perceived their fathers wanted more time with them. They reported that their fathers maintained the time they had with their children for many years after the divorce and that they contributed equally to college expenses. In fact, our data show that it is realistic to expect that children of divorce will maintain close relationships with their fathers, especially for those children who live significant amounts of time with their fathers and whose fathers refrain from criticizing and interfering with the child's relationship with the mother. We conclude that Wallerstein's subjects are not representative, and that the findings of her 25-year longitudinal study are outdated and do not reflect today's youth. Thus policy recommendations based on the father-child relationships in her families are misguided.

In addition, we found indications of what can make children's experience of their parents' divorce better or worse. When they do not live substantial amounts of time with their fathers, their relationships with them suffered. In fact, when living arrangements gave them *equal time with both parents* or *a lot of time with dad,* students enjoyed the same high-quality relationships with each of their parents, and they actually fared some-

what better than students from married families in which relationships with fathers were not as good as they were with mothers. Living equal or substantially equal time with each parent requires living in close proximity. We found that children whose parents did not relocate were better off on a range of measures, and that children felt that distance made visitation difficult. However, when parents lived close, visitation was difficult only when the father was inflexible in adjusting schedules, given that the child's primary residence had been with mother. In fact, when either parent was perceived to be inflexible about visitation, that parent's relationship with the child was worse, and when either parent (but especially the mother) was perceived to undermine the child's relationship with the other parent, the child's relationship with the offending parent suffered.

What may prohibit many divorces from being better for the child is parental disagreement over living arrangements, of which there were several examples. The more students perceived a parent engaging in undermining behaviors and attitudes, the less time they perceived that parent wanted them to have with the other parent. The more time they wanted with their fathers, the more they perceived their mothers interfering with that time. They saw mothers' desire to have the children with her as a primary reason they did not have more time with their fathers, and they expect that it is the norm for mothers and fathers to disagree about living arrangements. I argued that time with the child has meaning to the parent about how important he or she is to the child. Feeling unimportant can generate feelings of abandonment and anger in parents, and such feelings are not easily addressed by laws. They are influenced by societal norms about how important mothers and fathers should be to their children. If the living arrangements for children after divorce are to reflect the desires of young adults who have lived through their parents' divorces, there is need for a change of norms as well as laws. Young college adults, men and women alike, believe that equal time spent living with each parent after divorce is best for children, and they believe this with remarkable uniformity. We need to begin listening to them.

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January 24, 2008

MEMORANDUM

TO: Members of Assembly Committee on Children and Families

FROM: Patti Seger, Executive Director, Wisconsin Coalition Against Domestic Violence
608-255-0539 or pattis@wcadv.org

RE: Testimony in opposition to Assembly Bill 571

Thank you for allowing me the opportunity to provide testimony today regarding opposition to Assembly Bill (AB) 571. I am testifying on behalf of the Wisconsin Coalition Against Domestic Violence (WCADV). WCADV is the statewide voice and membership organization of over 70 Wisconsin domestic abuse programs, victims of domestic violence and their children, and citizens who are concerned with ending domestic violence.

AB 571 creates a one-size-fits-all solution to the concerns of some parents who, despite their desire for equalized placement, are not awarded equal placement by the court. While we wonder if this is a resolution that is even desired by all parents, WCADV's concerns are specifically focused on families affected by domestic violence[1] and the devastating impact equalized placement could have on victim and child safety. Under current law, the courts are already directed by a presumption of joint custody (decision making) and are to enter court orders that maximizes the time each parent has with each child. Under 2003 Act 130, the courts additionally must consider the impact of domestic violence on the safety of the children and must make attempts to protect children from further violence whenever possible. AB 571 creates yet another presumption that the courts must equalize placement unless it can be shown, by clear and convincing evidence, that it is not in the best interest of the children to do so.

Despite the overall trend in Wisconsin, and nationally, to recognize the seriousness of domestic violence, particularly within the criminal legal system, abusive men who fight for custody win 70% of contested custody actions, obtaining at least joint physical and legal custody or sole custody.[2] As research has increasingly established, men who are violent and abusive towards their wives or partners often use the legal system as a tactic of abuse after separation and divorce. They pursue custody of the children, equalized physical placement, and unsupervised access as a means to continue to exert control over or to harass their estranged partners.[3]

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[1] The Wisconsin Department of Justice reports approximately 30,000 reported incidents of domestic violence annually while the Wisconsin Department of Health and Family Services reports that local domestic violence programs serve more than 40,000 women, children and men annually.

[2] R. Bachman and L.E. Saltzman, *National Crime Victimization Survey, Violence Against Women: Estimates from the Redesigned Survey,* U.S. DOJ, Bureau of Justice Statistics, 1995.

[3] For a detailed review, see Daniel G. Saunders, *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns*, October 2007, VAWNet Applied Research Forum. Also, Lundy Bancroft and Jay Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*, Sage, 2002.

This is concerning because the existence of joint custody and placement orders can provide a batterer with access to information about the victim (child's parent), including location, and activities. Not only is the victim of domestic violence placed at substantially increased risk, so are the children. Increased access to victims can contribute to stalking by domestic violence perpetrators, including the risk of homicide. While homicide is at the farthest end of the violence spectrum and is relatively rarely occurring in our society, the consequences of homicide are wide spread, affecting families and communities alike. Even when homicide is not the final result, both the child(ren) and victim continue to be exposed to violence and abuse, undermining the safety and security of children from violent homes.

Since 2001 the Wisconsin Coalition Against Domestic Violence has reviewed domestic violence related homicides in the state. The homicide analysis provides graphic illustrations of the way in which the intersection of separation, child custody, and domestic violence can produce lethal results, and why AB 571 should be rejected. Any measure that proposes to "equalize physical placement to the highest degree" only puts victims of battering and their children at risk. In many of the following homicide cases mothers who were attempting to protect themselves and their children were faced with just that kind of demand or order.

- A 16-month-old was shot in the head and killed by his father, who then committed suicide. The boy's mother was fearful for her own and her child's safety. The child was the focus of a custody action after she filed for divorce. She told investigators that she had not been able to keep her child away from his father, in spite of her fears. A temporary order required equalized placement.
- A woman was shot and killed by her former partner, who was also her child's father. She had been trying to distance herself from him, but felt obligated to stay involved because of their son.
- A woman whose sons were the focus of an ongoing custody action was shot numerous times and killed, along with her parents. Her two sons had been the focus of a custody action since she had filed for divorce seven months earlier.
- Police made several prior calls for what were described as custody-related issues to the home of a woman who was shot in the head at point-blank range by her partner while their three young children were in the home.
- A five-year-old girl was shot in the head by her father, who then killed himself. Her mother had made many attempts to persuade the court that he should not have any unsupervised access to their child.
- A woman was strangled, stabbed multiple times, and beaten to death by her estranged husband while their 18-month-old son who was the focus of a custody action was at home. Her 14-year-old daughter arrived home from church and found her mother near death.

AB 571 puts the wants and needs of parents over what is in the best interest of children. On behalf of both victims and children from violent homes, WCADV urges the Assembly to reject the notion that a presumption of equalized placement is in the best interest of children. We urge the Assembly to recognize that rigid, one-size-fits all solutions do not best serve children, particularly when violence is a factor. Indeed, it can result in continued exposure to violence and even result in tragic consequences, including homicide.